
A BILL FOR AN ACT

RELATING TO APPRAISAL MANAGEMENT COMPANIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in 2008, the
2 nation's economy was shaken by the collapse of the sub-prime
3 mortgage market, which threatened the country's financial
4 system. While investigating the causes that led to this
5 collapse, Congress determined one cause was the use of
6 appraisals that did not conform to generally accepted standards
7 of independence, objectivity, and impartiality. Extensive abuse
8 was also discovered in the mortgage origination industry, with
9 appraisers' close business relationships with lenders and the
10 use of biased appraisals to facilitate the lending process found
11 to be contributing factors.

12 In response, Congress enacted the Dodd-Frank Wall Street
13 Reform and Consumer Protection Act, Pub. L. No. 111-203 (Dodd-
14 Frank Act). The Dodd-Frank Act helped restore independence to
15 the appraisal process by separating the lending process and
16 appraisal functions and requiring these functions to be
17 autonomous.



1 The legislature further finds that appraisal management
2 companies, commonly referred to as AMCs, have proliferated as a
3 result of the Dodd-Frank Act. One way of maintaining
4 independence between the appraisal function and the loan
5 origination function of an appraisal process is to have an
6 intermediary separate from the lender that orders and receives
7 appraisals, a function that has been fulfilled by appraisal
8 management companies.

9 Section 1473 of the Dodd-Frank Act required six federal
10 regulatory agencies to jointly promulgate rules that establish
11 minimum requirements to be applied by states in the registration
12 and supervision of appraisal management companies. The
13 appraisal management companies final rule (AMC Final Rule) was
14 published in the Federal Register on June 9, 2015, (80 Federal
15 Register 32657 et seq.) and became effective August 10, 2015.
16 The AMC Final Rule outlines certain minimum registration and
17 oversight requirements for each state to adopt. While the AMC
18 Final Rule does not force a state to enact these minimum
19 requirements, it specifies that if a state fails to do so by
20 August 10, 2018, certain non-federally regulated appraisal
21 management companies will be barred from providing appraisal



1 management services for federally related transactions in that
2 state.

3 The legislature additionally finds that Hawaii's failure to
4 adopt regulations for appraisal management companies that
5 conform to the AMC Final Rule could have unintended and adverse
6 consequences for Hawaii consumers and others involved in the
7 residential appraisal process in the State. The legislature
8 notes that a large source of Hawaii's funding for residential
9 mortgages comes from outside the State, through either direct
10 lending or secondary market investments, which frequently use
11 appraisal management companies. Furthermore, if conforming
12 legislation is not enacted, there is a risk that direct lending
13 for residential mortgages from outside the State could come to a
14 standstill, since appraisal orders could not be placed by
15 mainland lenders and Hawaii is too small a market for a large
16 lender to customize a system for the State. There is also a
17 risk that mortgages may not be available to all people in the
18 State who need them. This potential restriction of available
19 mortgage funds could make home affordability even more elusive
20 for residents of Hawaii and could adversely impact home
21 ownership for many families.



1 Protection Act, Pub. L. No. 111-203, and the final regulations
2 published on June 9, 2015, at title 12 Code of Federal
3 Regulations, sections 1222.20, et seq., 80 Federal Register
4 32657 et seq. The purpose of this chapter is to establish
5 minimum requirements for the regulation of certain non-federally
6 regulated appraisal management companies.

7 § -2 **Definitions.** As used in this chapter, unless the
8 context otherwise requires:

9 "Affiliate" has the same meaning as defined under title 12
10 United States Code section 1841, or any successor federal
11 statute.

12 "AMC national registry" means the registry of state-
13 registered appraisal management companies and federally
14 regulated appraisal management companies maintained by the
15 Appraisal Subcommittee.

16 "Appraisal management company" means a person that:

- 17 (1) Provides appraisal management services to creditors or
18 secondary mortgage market participants, including
19 affiliates;
- 20 (2) Provides appraisal management services in connection
21 with valuing a consumer's principal dwelling as



1 security for a consumer credit transaction or
2 incorporating these transactions into securitizations;
3 and

4 (3) Within a twelve-month calendar year, beginning
5 January 1 of each year and ending on December 31 of
6 each year, oversees an appraiser panel of more than
7 fifteen state-certified or state-licensed appraisers
8 in a state or twenty-five or more state-certified or
9 state-licensed appraisers in two or more states, as
10 described in section -5.

11 "Appraisal management company" does not include a department or
12 division of an entity that provides appraisal management
13 services only to that entity.

14 "Appraisal management services" means one or more of the
15 following:

- 16 (1) Recruiting, selecting, and retaining appraisers;
- 17 (2) Contracting with state-certified or state-licensed
18 appraisers to perform appraisal assignments;
- 19 (3) Managing the process of having an appraisal performed,
20 including providing administrative services such as
21 receiving appraisal orders and appraisal reports,



1 submitting completed appraisal reports to creditors
2 and secondary market participants; collecting fees
3 from creditors and secondary market participants for
4 services provided; and paying appraisers for services
5 performed; and

6 (4) Reviewing and verifying the work of appraisers.

7 "Appraiser panel" means a network, list, or roster of
8 licensed or certified appraisers approved by an appraisal
9 management company to perform appraisals as independent
10 contractors for the appraisal management company. Appraisers on
11 an appraisal management company's "appraiser panel" include:

12 (1) Appraisers accepted by the appraisal management
13 company for consideration for future appraisal
14 assignments in covered transactions or for secondary
15 mortgage market participants in connection with
16 covered transactions; and

17 (2) Appraisers engaged by the appraisal management company
18 to perform one or more appraisals in covered
19 transactions or for secondary mortgage market
20 participants in connection with covered transactions.



1 For purposes of this chapter, an appraiser is an independent
2 contractor if the appraiser is treated as an independent
3 contractor by the appraisal management company for purposes of
4 federal income taxation.

5 "Appraisal review" means the process of developing and
6 communicating an opinion about the quality of another
7 appraiser's work that was performed as part of an appraisal
8 assignment or appraisal review assignment related to the
9 appraiser's data collection, analysis, opinions, conclusions,
10 estimate of value, or compliance with the Uniform Standards of
11 Professional Appraisal Practice.

12 "Appraisal review" does not include:

- 13 (1) A general examination for grammatical, typographical,
14 mathematical, or other similar errors; or
15 (2) A general examination for completeness, including
16 regulatory or client requirements as specified in the
17 agreement process, that does not communicate an
18 opinion of value.

19 "Appraisal Subcommittee" means the Appraisal Subcommittee
20 of the Federal Financial Institutions Examination Council



1 created pursuant to title XI of the federal Financial
2 Institutions Reform, Recovery, and Enforcement Act of 1989.

3 "Consumer credit" means credit offered or extended to a
4 consumer primarily for personal, family, or household purposes.

5 "Controlling person" means:

- 6 (1) An officer, director, or owner of greater than a ten
7 per cent interest of a corporation, partnership, or
8 other business entity seeking to act as an appraisal
9 management company in the State;
- 10 (2) An individual employed, appointed, or authorized by an
11 appraisal management company who has the authority to:
- 12 (A) Enter a contractual relationship with other
13 persons for performance of services requiring
14 registration as an appraisal management company;
15 and
- 16 (B) Enter agreements with appraisers for the
17 performance of appraisals; or
- 18 (3) An individual who possesses, directly or indirectly,
19 the power to direct or cause the direction of the
20 management or policies of an appraisal management
21 company.



1 "Covered transaction" means any consumer credit transaction
2 secured by the consumer's principal dwelling.

3 "Creditor" means a person who regularly extends consumer
4 credit that is subject to a finance charge or is payable by
5 written agreement in more than four installments (not including
6 a down payment) and to whom the obligation is initially payable,
7 either on the face of the note or contract, or by agreement when
8 there is no note or contract.

9 A person regularly extends consumer credit if:

- 10 (1) The person extended credit (other than credit subject
11 to the requirements of title 12 Code of Federal
12 Regulations section 1026.32) more than five times for
13 transactions secured by a dwelling in the preceding
14 calendar year. If a person did not meet these
15 numerical standards in the preceding calendar year,
16 the numerical standards shall be applied to the
17 current calendar year; or
- 18 (2) In any twelve-month period, the person extends more
19 than one credit extension that is subject to the
20 requirements of title 12 Code of Federal Regulations



1 section 1026.32 or one or more such credit extensions
2 through a mortgage broker.

3 "Department" means the department of commerce and consumer
4 affairs.

5 "Director" means the director of commerce and consumer
6 affairs.

7 "Dwelling" means a residential structure that contains one
8 to four units, whether or not that structure is attached to real
9 property. "Dwelling" includes an individual condominium unit,
10 cooperative unit, mobile home, and trailer, if it is used as a
11 residence. A consumer can have only one principal dwelling at a
12 time. A vacation or other second home is not considered a
13 principal dwelling; provided that for purposes of this
14 definition, if a consumer buys or builds a new dwelling that
15 will become the consumer's principal dwelling within a year or
16 upon the completion of construction, the new dwelling shall be
17 considered the principal dwelling.

18 "Federally regulated appraisal management company" means an
19 appraisal management company that is owned and controlled by an
20 insured depository institution, as defined in title 12 United
21 States Code section 1813, and regulated by the Office of the



1 Comptroller of the Currency, the Board of Governors of the
2 Federal Reserve System, or the Federal Deposit Insurance
3 Corporation.

4 "Federally related transaction" means any real estate-
5 related financial transaction that involves an insured
6 depository institution regulated by the Office of the
7 Comptroller of the Currency, Board of Governors of the Federal
8 Reserve System, Federal Deposit Insurance Corporation, or
9 National Credit Union Administration, and that requires the
10 services of an appraiser under the interagency appraisal rules.

11 "Person" means a natural person or an organization,
12 including a corporation, partnership, proprietorship,
13 association, cooperative, estate, trust, or government unit.

14 "Real estate-related financial transaction" means any
15 transaction involving the sale, lease, purchase, investment in,
16 or exchange of real property, including interests in property or
17 the financing thereof, including the refinancing of real
18 property or interests in real property and the use of real
19 property or interests in property as security for a loan or
20 investment, including mortgage-backed securities.



1 "Secondary mortgage market participant" means a guarantor
2 or insurer of mortgage-backed securities or an underwriter or
3 issuer of mortgage-backed securities. "Secondary mortgage
4 market participant" only includes an individual investor in a
5 mortgage-backed security if that investor also serves in the
6 capacity of a guarantor, insurer, underwriter, or issuer for the
7 mortgage-backed security.

8 "Uniform Standards of Professional Appraisal Practice"
9 means the most recent iteration of the Uniform Standards of
10 Professional Appraisal Practice developed by the appraisal
11 standards board of The Appraisal Foundation and approved by the
12 director.

13 **§ -3 Appraisal management company registration program.**

14 There is established an appraisal management company
15 registration program, subject to the real estate appraiser
16 program established pursuant to section 466K-2, to be
17 administered by the director in the director's capacity as the
18 program administrator for both programs.

19 **§ -4 Powers and duties of the director.** In addition to
20 any other powers and duties authorized by law, the director
21 shall have the following powers and duties:



- 1 (1) Review and approve or deny an appraisal management
2 company's application for initial registration;
- 3 (2) Renew or deny an appraisal management company's
4 registration periodically;
- 5 (3) Examine the books and records of an appraisal
6 management company operating in the State and require
7 the appraisal management company to submit reports,
8 information, and documents;
- 9 (4) Verify that the appraisers on the appraisal management
10 company's appraiser panel hold valid state licenses or
11 certifications, as applicable;
- 12 (5) Conduct investigations of appraisal management
13 companies to assess potential violations of applicable
14 appraisal-related laws, regulations, or orders;
- 15 (6) Discipline, suspend, terminate, or deny renewal of the
16 registration of an appraisal management company that
17 violates applicable appraisal-related laws,
18 regulations, or orders;
- 19 (7) Report an appraisal management company's violation of
20 applicable appraisal-related law, regulations, or
21 orders, as well disciplinary and enforcement actions



1 and other relevant information about an appraisal
2 management company's operations, to the Appraisal
3 Subcommittee; and

4 (8) Adopt, amend, and repeal rules, pursuant to chapter
5 91, as may be necessary to establish the appraisal
6 management company registration program and implement,
7 administer, and enforce this chapter.

8 § -5 **Appraiser panel; annual size calculation.** (a) For
9 purposes of determining whether an appraisal entity meets the
10 size requirement of an appraisal management company, as that
11 term is defined in section -2, an appraiser shall be deemed
12 part of the appraisal management company's appraiser panel as of
13 the earliest date on which the appraisal management company:

14 (1) Accepts the appraiser for the appraisal management
15 company's consideration for future appraisal
16 assignments in covered transactions or for secondary
17 mortgage market participants in connection with
18 covered transactions; or

19 (2) Engages the appraiser to perform one or more
20 appraisals on behalf of a creditor for covered



1 transactions or a secondary mortgage market
2 participant in connection with covered transactions.

3 (b) An appraiser who is deemed part of the appraisal
4 management company's appraiser panel pursuant to subsection (a)
5 shall be deemed to remain on the appraiser panel until the date
6 on which the appraisal management company:

7 (1) Sends written notice to the appraiser removing the
8 appraiser from the appraiser panel, with an
9 explanation of the appraisal management company's
10 action; or

11 (2) Receives written notice from the appraiser asking to
12 be removed from the appraiser panel or notice of the
13 death or incapacity of the appraiser.

14 (c) If an appraiser is removed from an appraisal
15 management company's appraiser panel pursuant to subsection (b),
16 and the appraisal management company subsequently accepts the
17 appraiser for consideration for future assignments or engages
18 the appraiser at any time during the twelve months after the
19 appraiser's removal:

20 (1) The removal shall be deemed not to have occurred; and



1 (2) The appraiser shall be deemed to have been part of the
2 appraisal management company's appraiser panel without
3 interruption.

4 § -6 **Registration required.** (a) No person may directly
5 or indirectly engage or attempt to engage in business as an
6 appraisal management company, directly or indirectly perform or
7 attempt to perform appraisal management services, or advertise
8 or hold oneself out as engaging in or conducting business as an
9 appraisal management company without first being registered
10 pursuant to this chapter.

11 (b) An appraisal management company shall:

12 (1) Register with the real estate appraiser program
13 administered by the department pursuant to chapter
14 466K;

15 (2) Engage only state-licensed or state-certified
16 appraisers for federally related transactions in
17 conformity with any federally related transaction
18 regulations;

19 (3) Establish and comply with processes and controls
20 reasonably designed to ensure that the appraisal
21 management company, in engaging an appraiser, selects



1 an appraiser who is independent of the transaction and
2 has the requisite education, expertise, and experience
3 necessary to competently complete the appraisal
4 assignment for the particular market and property
5 type;

6 (4) Direct an appraiser to perform the assignment in
7 accordance with the Uniform Standards of Professional
8 Appraisal Practice; and

9 (5) Establish and comply with processes and controls
10 reasonably designed to ensure that the appraisal
11 management company conducts its appraisal management
12 services in accordance with the requirements of
13 section 129E(a) through 129E(i) of the Truth in
14 Lending Act, title 15 United States Code sections
15 1639e(a) through 1639e(i), and regulations adopted
16 thereunder.

17 (c) This section shall not apply to:

18 (1) A person that exclusively employs appraisers on an
19 employer and employee basis for the performance of
20 appraisals in this State;

21 (2) A federally regulated appraisal management company;



- 1 (3) A department or unit within a financial institution
2 that is subject to direct regulation by an agency of
3 the federal government that is a member of the Federal
4 Financial Institutions Examination Council or its
5 successor, or to regulation by the commissioner of
6 financial institutions under chapter 412, that
7 receives a request for the performance of an appraisal
8 from one employee of the financial institution, and
9 another employee of the same financial institution
10 assigns the request for the appraisal to an appraiser
11 that is an independent contractor to the institution,
12 except that an appraisal management company that is a
13 wholly owned subsidiary of a financial institution
14 shall not be considered a department or unit within a
15 financial institution to which the provisions of this
16 chapter do not apply; or
- 17 (4) An appraiser who enters into an agreement with another
18 appraiser for the performance of an appraisal that
19 upon completion results in a report signed by both the
20 appraiser who completed the appraisal and the



1 appraiser who requested the completion of the
2 appraisal.

3 (d) Any person who engages in an activity requiring
4 registration as an appraisal management company issued by the
5 director and who fails to obtain the required registration, or
6 who uses any work, title, or representation to induce the false
7 belief that the person is registered to engage in said activity,
8 shall be guilty of a misdemeanor and shall be subject to a fine
9 of not more than \$1,000 or imprisoned not more than one year, or
10 both, and each day of violation shall be deemed a separate
11 offense.

12 (e) The director may maintain a suit to enjoin the
13 performance or the continuance of any act or acts by a person
14 acting without a registration where a registration is required
15 by law, and if injured thereby, for the recovery of damages.

16 § -7 **Registration process.** An applicant for
17 registration under this chapter shall file an application for
18 registration with the director on a form prescribed by the
19 director and pay a fee established by the director. The form
20 shall require any information necessary to determine eligibility
21 for registration.



1 § -8 Criminal history record checks. (a) The
2 application submitted pursuant to section -7 shall contain
3 the information and authorizations necessary to conduct a
4 criminal history record check in accordance with section 846-2.7
5 for:

6 (1) Each person applying for registration who owns more
7 than ten per cent of an appraisal management company;
8 and

9 (2) Each of the applicant's controlling persons.

10 (b) The information and authorizations shall be
11 accompanied by the appropriate payment of the applicable fee for
12 each record check.

13 § -9 Appraisal management company registration numbers.

14 (a) The director shall issue a unique registration number to
15 each appraisal management company registered in this State.

16 (b) The director shall maintain a list of the appraisal
17 management companies that are registered with the director.

18 (c) An appraisal management company registered in this
19 State shall place its registration number on engagement
20 documents utilized by the appraisal management company to
21 procure appraisal services in this State.



1 **§ -10 Expiration of registration.** Registrations shall
2 expire on December 31 of each odd-numbered year. The expiration
3 date of the registration shall appear on the appraisal
4 management company registration certificate issued to the
5 registrant, and no other notice of its expiration need be given
6 to the registrant.

7 **§ -11 Compliance with the Uniform Standards of**
8 **Professional Appraisal Practice.** As a condition of registration
9 or renewal of registration, each appraisal management company in
10 the State shall certify that the company requires appraisers
11 completing appraisals at the company's request to comply with
12 the Uniform Standards of Professional Appraisal Practice.

13 **§ -12 Consent to service of process.** An applicant for
14 registration under this chapter that is not domiciled in the
15 State shall complete an irrevocable consent to service of
16 process, in a form approved by the attorney general.

17 **§ -13 Reporting requirements; non-federally regulated**
18 **appraisal management companies.** The director shall collect from
19 each appraisal management company registered or seeking
20 registration in the State all information and fees required by
21 the Appraisal Subcommittee to be submitted to the Appraisal



1 Subcommittee by the State, pursuant to regulations or guidance
2 promulgated by the Appraisal Subcommittee.

3 § -14 Reporting requirements; federally regulated
4 appraisal management companies; reporting information for
5 appraisal management companies. A federally regulated appraisal
6 management company operating in the State shall report to the
7 director the information required to be submitted by the State
8 to the Appraisal Subcommittee, pursuant to the Appraisal
9 Subcommittee's policies regarding the determination of the AMC
10 national registry fee. These reporting requirements shall
11 include:

- 12 (1) A notice of intent to operate in the State;
- 13 (2) Information related to whether the appraisal
14 management company is owned in whole or in part,
15 directly or indirectly, by any person who has had an
16 appraiser license or certification refused, denied,
17 canceled, surrender in lieu of revocation, or revoked
18 in any state for a substantive cause, as determined by
19 the Appraisal Subcommittee; and
- 20 (3) If a person has had such action taken on the person's
21 appraisal license or certification, the director shall



1 collect information related to whether the license or
2 certification was revoked for a substantive cause and
3 if the license or certification has been reinstated by
4 the state or states in which the appraiser was
5 licensed or certified.

6 § -15 **Owner requirements.** (a) An appraisal management
7 company applying for, holding, or renewing a registration under
8 this chapter shall not be owned, in whole or in part, directly
9 or indirectly, by any person who has had an appraiser license or
10 certification refused, denied, canceled, surrendered in lieu of
11 revocation, or revoked in any state for a substantive cause, as
12 determined by the appropriate state appraiser certifying and
13 licensing agency; provided that an appraisal management company
14 may be registered under this chapter if the license or
15 certification of the appraiser with an ownership interest was
16 not revoked for a substantive cause and the license or
17 certification has been reinstated by the state in which the
18 appraiser was licensed or certified.

19 (b) Each person that owns more than ten per cent of an
20 appraisal management company and applies for, holds, or renews a
21 registration under this chapter shall:



- 1 (1) Be of good moral character; and
- 2 (2) Submit to a criminal history record check pursuant to
- 3 section -8.

4 § -16 **Controlling person.** An appraisal management
5 company applying for registration or renewal of registration in
6 the State shall designate one controlling person to serve as the
7 main contact for all communication between the department and
8 the company. The controlling person shall:

- 9 (1) Be in good standing in the State and in any other
- 10 state that has at any time issued the controlling
- 11 person an appraiser license or certification; provided
- 12 that nothing in this chapter shall require that a
- 13 designated controlling person hold or continue to hold
- 14 an appraiser license or certification in any
- 15 jurisdiction;
- 16 (2) Never have had an appraiser license or certification
- 17 in this State or any other state refused, denied,
- 18 canceled, revoked, or surrendered in lieu of a pending
- 19 disciplinary proceeding in any jurisdiction and not
- 20 have had the license or certification subsequently
- 21 reinstated or granted;



1 (3) Be of good moral character; and

2 (4) Submit to a criminal history record check pursuant to
3 section -8.

4 § -17 **Appraiser engagement.** Before or at the time of
5 placing an assignment to appraise real property in the State
6 with an appraiser on the appraiser panel of an appraisal
7 management company, the appraisal management company shall
8 verify that the appraiser receiving the assignment holds an
9 appraiser license or certification in good standing in this
10 State and verify that the appraiser receiving the assignment
11 meets the competency rule of the Uniform Standards of
12 Professional Appraisal Practice. An attestation provided by an
13 appraiser that such appraiser is geographically competent within
14 the appraiser's scope of practice will satisfy an appraisal
15 management company's responsibility under this section.

16 § -18 **Appraisal review.** Any employee of or independent
17 contractor to an appraisal management company who performs an
18 appraisal review for a property located in this State shall be a
19 licensed or certified appraiser in good standing in the State
20 and any other jurisdiction in which the appraiser is licensed or
21 certified.



1 **§ -19 Verification of licensure or certification. (a)**

2 An appraisal management company registered in the State may not
3 enter any contract or agreement with an appraiser for the
4 performance of appraisals in the State unless the company
5 verifies that the appraiser is licensed or certified in good
6 standing in the State.

7 (b) An appraisal management company seeking registration
8 or renewal of registration in the State shall certify that the
9 company has a system and process in place to verify that an
10 individual added to the appraiser panel of the company for
11 appraisal services holds an appraiser license or certification
12 in good standing in this State.

13 **§ -20 Fee disclosure.** An appraisal management company
14 registered in the State shall not prohibit an independent
15 appraiser who is part of the appraiser panel from recording the
16 fee that the appraiser was paid by the appraisal management
17 company for the performance of an appraisal within the
18 communication of the appraisal.

19 **§ -21 Retention of records. (a)** Each appraisal
20 management company seeking registration or renewal of
21 registration in the State shall certify that the appraisal



1 management company maintains a detailed record of each service
2 request the company receives for appraisals of real property
3 located in the State.

4 (b) An appraisal management company registered in the
5 State shall retain all records required to be maintained under
6 this chapter for at least five years after the file is submitted
7 to the appraisal management company or at least two years after
8 final disposition of any related judicial proceeding of which
9 the appraisal management company is provided notice, whichever
10 period expires last.

11 (c) All records required to be maintained pursuant to this
12 section shall be made available for inspection by the director
13 upon request.

14 § -22 Payments to appraisers. (a) An appraisal
15 management company shall, except in bona fide cases of breach of
16 contract or substandard performance of services, make payment to
17 an independent appraiser for the completion of an appraisal or
18 valuation assignment within forty-five days of the date on which
19 the appraiser transmits or otherwise provides the completed
20 appraisal or valuation assignment to the appraisal management



1 company or the company's assignee, unless a mutually agreed-upon
2 alternate arrangement has been previously established.

3 (b) An appraisal management company seeking registration
4 or renewal of registration shall certify that the company will
5 require appraisals to be conducted independently, as required by
6 the appraisal independence requirements under section 129E of
7 the Truth in Lending Act, title 15 United States Code section
8 1639e, including the requirement that a customary and reasonable
9 fee be paid to an independent appraiser who completes an
10 appraisal in connection with a consumer credit transaction
11 secured by the principal dwelling.

12 § -23 **Appraiser independence.** (a) It shall be a
13 violation of this chapter for any employee, director, officer,
14 or agent of an appraisal management company registered in this
15 State to engage in any act or practice that violates appraisal
16 independence as described in subsection (b).

17 (b) For purposes of subsection (a), acts or practices that
18 violate appraisal independence shall include:

19 (1) Any appraisal of a property offered as security for
20 repayment of the consumer credit transaction that is
21 conducted in connection with such transaction in which



1 a person with an interest in the underlying
2 transaction compensates, coerces, extorts, colludes,
3 instructs, induces, bribes, or intimidates a person,
4 appraisal management company, firm, or other entity
5 conducting or involved in an appraisal, or attempts to
6 compensate, coerce, extort, collude, instruct, induce,
7 bribe, or intimidate such a person, for the purpose of
8 causing the appraisal value assigned, under the
9 appraisal, to the property to be based on any fact
10 other than the independent judgment of the appraiser;

11 (2) Mischaracterizing, or suborning any
12 mischaracterization of, the appraised value of the
13 property securing the extension of credit;

14 (3) Seeking to influence an appraiser or otherwise to
15 encourage a targeted value in order to facilitate the
16 making or pricing of the transaction; and

17 (4) Withholding or threatening to withhold timely payment
18 for an appraisal report or for appraisal services
19 rendered when the appraisal report or services are
20 provided in accordance with the contract between the
21 parties.



1 (c) The requirements of subsections (a) and (b) shall not
2 be construed as prohibiting an appraisal management company,
3 employee of an appraisal management company, consumer, or any
4 other person with an interest in a real estate transaction from
5 asking an appraiser to:

6 (1) Consider additional appropriate property information,
7 including the consideration of additional comparable
8 properties to make or support an appraisal;

9 (2) Provide further detail, substantiation, or explanation
10 for the appraiser's consideration in the appraisal; or

11 (3) Correct objective errors in the appraisal report.

12 (d) Any appraisal management company, employee of an
13 appraisal management company, or any other person involved in a
14 real estate transaction involving an appraisal in connection
15 with a consumer credit transaction who has a reasonable basis to
16 believe an appraiser is failing to comply with the Uniform
17 Standards of Professional Appraisal Practice, is violating
18 applicable laws, or is otherwise engaging in unethical or
19 unprofessional conduct, shall refer the matter to the director.

20 (e) Every appraisal management company shall establish and
21 comply with processes and controls reasonably designed to ensure



1 that the appraisal management company, in engaging an appraiser,
2 selects an appraiser who is independent of the transaction and
3 who has the requisite education, expertise, and experience
4 necessary to competently complete the appraisal assignment for
5 the particular market and property type. Every appraisal
6 management company shall establish and comply with processes and
7 controls reasonably designed to ensure that the appraisal
8 management company conducts its appraisal management services in
9 accordance with the requirements of title 15 United States Code
10 section 1639e(a) through (i), and regulations adopted
11 thereunder.

12 § -24 **Mandatory reporting of violations.** An appraisal
13 management company that has a reasonable basis to believe an
14 appraiser has materially failed to comply with applicable laws
15 or rules or has materially violated the Uniform Standards of
16 Professional Appraisal Practice shall refer the matter to the
17 director in conformance with applicable federal laws and
18 regulations.

19 § -25 **Prohibited conduct.** (a) No employee, director,
20 officer, agent, independent contractor, or other third party
21 acting on behalf of an appraisal management company shall:



- 1 (1) Procure or attempt to procure a registration or
2 renewal by knowingly making a false statement,
3 submitting false information, or refusing to provide
4 complete information in response to a question in an
5 application for registration or renewal;
- 6 (2) Wilfully violate this chapter or rules adopted by the
7 director pursuant to this chapter;
- 8 (3) Improperly influence or attempt to improperly
9 influence the development, reporting, result, or
10 review of an appraisal through intimidation, coercion,
11 extortion, bribery, or any other manner, including but
12 not limited to:
- 13 (A) Withholding payment for appraisal services;
- 14 (B) Threatening to exclude an appraiser from future
15 work or threatening to demote or terminate the
16 appraiser in order to improperly obtain a desired
17 result;
- 18 (C) Conditioning payment of an appraisal fee upon the
19 opinion, conclusion, or valuation to be reached;
- 20 or



- 1 (D) Requesting that an appraiser report a
2 predetermined opinion, conclusion, or valuation
3 or the desired valuation of any person or entity;
- 4 (4) Alter, amend, or change an appraisal report submitted
5 by an appraiser without the appraiser's knowledge and
6 written consent;
- 7 (5) Except within the first ninety days after an
8 independent appraiser is added to an appraiser panel,
9 remove an independent appraiser from an appraiser
10 panel without prior written notice to the appraiser;
11 provided that the prior written notice shall include
12 the following, if applicable:
- 13 (A) The appraiser's illegal conduct;
- 14 (B) The appraiser's violation of the Uniform
15 Standards of Professional Appraisal Practice,
16 this chapter, or rules adopted pursuant to this
17 chapter;
- 18 (C) The appraiser's improper or unprofessional
19 conduct; or
- 20 (D) The appraiser's substandard performance or other
21 substantive deficiencies;



- 1 (6) Require an appraiser to sign any indemnification
2 agreement that would require the appraiser to defend
3 and hold harmless the appraisal management company or
4 any of its agents or employees for any liability,
5 damage, losses, or claims arising out of the services
6 performed by the appraisal management company or its
7 agents, employees, or independent contractors, and not
8 the services performed by the appraiser;
- 9 (7) Prohibit lawful communications between the appraiser
10 and any other person to whom the appraiser, in the
11 appraiser's professional judgment, believes possesses
12 information that would be relevant;
- 13 (8) Engage in any other act or practice that impairs or
14 attempts to impair a real estate appraiser's
15 independence, objectivity, and impartiality;
- 16 (9) Fail to timely respond to any subpoena or other
17 request for information;
- 18 (10) Fail to timely obey an administrative order of the
19 director or department; or
- 20 (11) Fail to cooperate in any investigation.



1 (b) Nothing in this chapter shall prevent an appraisal
2 management company from requesting an appraiser to provide
3 additional information about the basis for a valuation, correct
4 objective factual errors in an appraisal report, or consider
5 additional appropriate property information.

6 § -26 **Disciplinary proceedings.** The director may deny,
7 suspend, or revoke the registration of an appraisal management
8 company; impose a monetary penalty of an amount not to exceed
9 \$5,000 per violation; issue a letter of reprimand; refuse to
10 issue or renew the registration of an appraisal management
11 company; or take other disciplinary action against an appraisal
12 management company for any one or more of the following acts or
13 conditions:

- 14 (1) The applicant is not of a good moral character;
15 (2) The applicant has had a registration revoked or
16 suspended for cause, or surrendered in lieu of
17 disciplinary proceedings;
18 (3) The applicant, upon renewal of registration, would not
19 be eligible for registration on a first application;



- 1 (4) The issuance of a registration would result in a
2 violation of this chapter or any rules adopted
3 pursuant to this chapter;
- 4 (5) In the conduct of affairs under the registration, the
5 registrant has demonstrated incompetency,
6 untrustworthiness, or conduct or practices rendering
7 the registrant unfit to carry on appraisal management
8 services; made continuance in the business detrimental
9 to the public interest; or is no longer in good faith
10 carrying on appraisal management services, and for
11 this conduct is found by the director to be a source
12 of detriment, injury, or loss to the public;
- 13 (6) The appraisal management company committed any act in
14 violation of this chapter;
- 15 (7) The appraisal management company violated any rule
16 adopted by the department in the interest of the
17 public and consistent with this chapter;
- 18 (8) The appraisal management company procured a
19 registration or renewal of registration for the
20 appraisal management company or intentionally



1 committed any other act by fraud, misrepresentation,
2 or deceit; or

3 (9) The appraisal management company violates this
4 chapter, chapter 436B, or any rule or order of the
5 director.

6 **§ -27 Fees; bond required.** (a) The director may charge
7 the appraisal management company reasonable fees to offset costs
8 of operating the appraisal management company registration
9 program established pursuant to this chapter. The following
10 fees shall apply:

- 11 (1) Nonrefundable application fee...\$100;
12 (2) Biennial registration fee...\$5,000; and
13 (3) Biennial compliance resolution fund fee...\$500.

14 In addition, upon the issuance of a new registration and at each
15 renewal period, each appraisal management company shall pay a
16 special assessment fee of \$390 that shall be deposited into the
17 compliance resolution fund established pursuant to section
18 26-9(o). Fees assessed pursuant to this chapter shall be used
19 to defray costs incurred by the department in implementing this
20 chapter.



1 (b) Pursuant to section 26-9(1), the director shall
2 establish other fees relating to the administration of this
3 chapter by rule.

4 (c) Each appraisal management company applying for or
5 renewing a registration shall post with the director and
6 maintain a surety bond in the amount of \$25,000 as follows:

7 (1) The bond shall be in a form satisfactory to the
8 director;

9 (2) The bond will accrue to the program for the benefit of
10 a claimant against the registrant to secure the
11 faithful performance of the registrant's obligations
12 under applicable laws and rules and to a real estate
13 appraiser who has performed an appraisal for the
14 registrant for which the appraiser has not been paid;

15 (3) The aggregate liability of the surety shall not exceed
16 the principal sum of the bond;

17 (4) A party having a claim against the registrant may
18 bring suit directly on the surety bond, or the
19 director may bring suit on behalf of the party having
20 a claim against the registrant, either in one action
21 or in successive actions;



- 1 (5) A claim reducing the face amount of the bond shall be
2 annually restored upon renewal of the registrant's
3 registration;
- 4 (6) The bond shall remain in effect until cancellation,
5 which may occur only after ninety days' written notice
6 to the program. Cancellation shall not affect any
7 liability incurred or accrued during that period; and
- 8 (7) Upon termination or cancellation of the bond required
9 in this subsection, a registered appraisal management
10 company shall file a replacement bond or shall
11 surrender its registration to do business in the State
12 and shall immediately cease operation as an appraisal
13 management company in the State. A registered
14 appraisal management company that voluntarily ceases
15 operations in this State shall ensure a surety bond
16 remains in place for no less than two years after the
17 registered appraisal management company ceases
18 operations.

19 § -28 Federal registry requirements. (a) The director
20 shall collect from each appraisal management company registered
21 or seeking to be registered in this State the information that



1 the Appraisal Subcommittee requires to be submitted to it by the
2 State pursuant to regulations or guidance adopted by the
3 Appraisal Subcommittee.

4 (b) A federally regulated appraisal management company
5 operating in this State shall report to the director the
6 information required to be submitted by the State to the
7 Appraisal Subcommittee, pursuant to the Appraisal Subcommittee's
8 policies regarding the determination of the appraisal management
9 company national registry fee. These reports shall include:

- 10 (1) A report to the director of the intent of the
11 federally regulated appraisal management company to
12 operate in this State;
- 13 (2) Information related to whether the appraisal
14 management company is owned in whole or in part,
15 directly or indirectly, by any person who has had an
16 appraiser license or certificate refused, denied,
17 canceled, surrendered in lieu of revocation, or
18 revoked in any state for a substantive cause, as
19 determined by the Appraisal Subcommittee; and
- 20 (3) If such person or persons has had such action taken on
21 their appraisal license, the director shall collect



1 information related to whether the license was revoked
2 for a substantive cause and if it has been reinstated
3 by the state or states in which the appraiser was
4 licensed.

5 § -29 Exemption. This chapter shall not apply to an
6 appraiser who enters an agreement with another appraiser for the
7 performance of an appraisal that, upon completion, results in a
8 report signed by the appraiser who completed the appraisal and
9 the appraiser who requested completion of the appraisal."

10 SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) Criminal history record checks may be conducted by:

- 13 (1) The department of health or its designee on operators
14 of adult foster homes for individuals with
15 developmental disabilities or developmental
16 disabilities domiciliary homes and their employees, as
17 provided by section 321-15.2;
- 18 (2) The department of health or its designee on
19 prospective employees, persons seeking to serve as
20 providers, or subcontractors in positions that place
21 them in direct contact with clients when providing



- 1 non-witnessed direct mental health or health care
2 services as provided by section 321-171.5;
- 3 (3) The department of health or its designee on all
4 applicants for licensure or certification for,
5 operators for, prospective employees, adult
6 volunteers, and all adults, except adults in care, at
7 healthcare facilities as defined in section 321-15.2;
- 8 (4) The department of education on employees, prospective
9 employees, and teacher trainees in any public school
10 in positions that necessitate close proximity to
11 children as provided by section 302A-601.5;
- 12 (5) The counties on employees and prospective employees
13 who may be in positions that place them in close
14 proximity to children in recreation or child care
15 programs and services;
- 16 (6) The county liquor commissions on applicants for liquor
17 licenses as provided by section 281-53.5;
- 18 (7) The county liquor commissions on employees and
19 prospective employees involved in liquor
20 administration, law enforcement, and liquor control
21 investigations;



- 1 (8) The department of human services on operators and
2 employees of child caring institutions, child placing
3 organizations, and foster boarding homes as provided
4 by section 346-17;
- 5 (9) The department of human services on prospective
6 adoptive parents as established under section
7 346-19.7;
- 8 (10) The department of human services or its designee on
9 applicants to operate child care facilities, household
10 members of the applicant, prospective employees of the
11 applicant, and new employees and household members of
12 the provider after registration or licensure as
13 provided by section 346-154, and persons subject to
14 section 346-152.5;
- 15 (11) The department of human services on persons exempt
16 pursuant to section 346-152 to be eligible to provide
17 child care and receive child care subsidies as
18 provided by section 346-152.5;
- 19 (12) The department of health on operators and employees of
20 home and community-based case management agencies and
21 operators and other adults, except for adults in care,



1 residing in community care foster family homes as
2 provided by section 321-15.2;

3 (13) The department of human services on staff members of
4 the Hawaii youth correctional facility as provided by
5 section 352-5.5;

6 (14) The department of human services on employees,
7 prospective employees, and volunteers of contracted
8 providers and subcontractors in positions that place
9 them in close proximity to youth when providing
10 services on behalf of the office or the Hawaii youth
11 correctional facility as provided by section 352D-4.3;

12 (15) The judiciary on employees and applicants at detention
13 and shelter facilities as provided by section 571-34;

14 (16) The department of public safety on employees and
15 prospective employees who are directly involved with
16 the treatment and care of persons committed to a
17 correctional facility or who possess police powers
18 including the power of arrest as provided by section
19 353C-5;



- 1 (17) The board of private detectives and guards on
2 applicants for private detective or private guard
3 licensure as provided by section 463-9;
- 4 (18) Private schools and designated organizations on
5 employees and prospective employees who may be in
6 positions that necessitate close proximity to
7 children; provided that private schools and designated
8 organizations receive only indications of the states
9 from which the national criminal history record
10 information was provided pursuant to section 302C-1;
- 11 (19) The public library system on employees and prospective
12 employees whose positions place them in close
13 proximity to children as provided by section
14 302A-601.5;
- 15 (20) The State or any of its branches, political
16 subdivisions, or agencies on applicants and employees
17 holding a position that has the same type of contact
18 with children, vulnerable adults, or persons committed
19 to a correctional facility as other public employees
20 who hold positions that are authorized by law to



- 1 require criminal history record checks as a condition
2 of employment as provided by section 78-2.7;
- 3 (21) The department of health on licensed adult day care
4 center operators, employees, new employees,
5 subcontracted service providers and their employees,
6 and adult volunteers as provided by section 321-15.2;
- 7 (22) The department of human services on purchase of
8 service contracted and subcontracted service providers
9 and their employees serving clients of the adult
10 protective and community services branch, as provided
11 by section 346-97;
- 12 (23) The department of human services on foster grandparent
13 program, senior companion program, and respite
14 companion program participants as provided by section
15 346-97;
- 16 (24) The department of human services on contracted and
17 subcontracted service providers and their current and
18 prospective employees that provide home and community-
19 based services under section 1915(c) of the Social
20 Security Act, title 42 United States Code section
21 1396n(c), or under any other applicable section or



1 sections of the Social Security Act for the purposes
2 of providing home and community-based services, as
3 provided by section 346-97;

4 (25) The department of commerce and consumer affairs on
5 proposed directors and executive officers of a bank,
6 savings bank, savings and loan association, trust
7 company, and depository financial services loan
8 company as provided by section 412:3-201;

9 (26) The department of commerce and consumer affairs on
10 proposed directors and executive officers of a
11 nondepository financial services loan company as
12 provided by section 412:3-301;

13 (27) The department of commerce and consumer affairs on the
14 original chartering applicants and proposed executive
15 officers of a credit union as provided by section
16 412:10-103;

17 (28) The department of commerce and consumer affairs on:

18 (A) Each principal of every non-corporate applicant
19 for a money transmitter license;

20 (B) The executive officers, key shareholders, and
21 managers in charge of a money transmitter's



- 1 activities of every corporate applicant for a
2 money transmitter license; and
- 3 (C) The persons who are to assume control of a money
4 transmitter licensee in connection with an
5 application requesting approval of a proposed
6 change in control of licensee,
7 as provided by sections 489D-9 and 489D-15;
- 8 (29) The department of commerce and consumer affairs on
9 applicants for licensure and persons licensed under
10 title 24;
- 11 (30) The Hawaii health systems corporation on:
- 12 (A) Employees;
- 13 (B) Applicants seeking employment;
- 14 (C) Current or prospective members of the corporation
15 board or regional system board; or
- 16 (D) Current or prospective volunteers, providers, or
17 contractors,
18 in any of the corporation's health facilities as
19 provided by section 323F-5.5;
- 20 (31) The department of commerce and consumer affairs on:



- 1 (A) An applicant for a mortgage loan originator
2 license; and
- 3 (B) Each control person, executive officer, director,
4 general partner, and manager of an applicant for
5 a mortgage loan originator company license,
6 as provided by chapter 454F;
- 7 (32) The state public charter school commission or public
8 charter schools on employees, teacher trainees,
9 prospective employees, and prospective teacher
10 trainees in any public charter school for any position
11 that places them in close proximity to children, as
12 provided in section 302D-33;
- 13 (33) The counties on prospective employees who work with
14 children, vulnerable adults, or senior citizens in
15 community-based programs;
- 16 (34) The counties on prospective employees for fire
17 department positions which involve contact with
18 children or vulnerable adults;
- 19 (35) The counties on prospective employees for emergency
20 medical services positions which involve contact with
21 children or vulnerable adults;



- 1 (36) The counties on prospective employees for emergency
2 management positions and community volunteers whose
3 responsibilities involve planning and executing
4 homeland security measures including viewing,
5 handling, and engaging in law enforcement or
6 classified meetings and assisting vulnerable citizens
7 during emergencies or crises;
- 8 (37) The State and counties on employees, prospective
9 employees, volunteers, and contractors whose position
10 responsibilities require unescorted access to secured
11 areas and equipment related to a traffic management
12 center;
- 13 (38) The State and counties on employees and prospective
14 employees whose positions involve the handling or use
15 of firearms for other than law enforcement purposes;
- 16 (39) The State and counties on current and prospective
17 systems analysts and others involved in an agency's
18 information technology operation whose position
19 responsibilities provide them with access to
20 proprietary, confidential, or sensitive information;



- 1 (40) The department of commerce and consumer affairs on
2 [applicants]:
- 3 (A) Applicants for real estate appraiser licensure or
4 certification as provided by chapter 466K;
- 5 (B) Each person who owns more than ten per cent of an
6 appraisal management company who is applying for
7 registration as an appraisal management company,
8 as provided by section -7; and
- 9 (C) Each of the controlling persons of an applicant
10 for registration as an appraisal management
11 company, as provided by section -7;
- 12 (41) The department of health or its designee on all
13 license applicants, licensees, employees, contractors,
14 and prospective employees of medical marijuana
15 dispensaries, and individuals permitted to enter and
16 remain in medical marijuana dispensary facilities as
17 provided under sections 329D-15(a)(4) and
18 329D-16(a)(3);
- 19 (42) The department of commerce and consumer affairs on
20 applicants for nurse licensure or license renewal,



1 reactivation, or restoration as provided by sections
2 457-7, 457-8, 457-8.5, and 457-9;

3 [+](43) [+] The county police departments on applicants for
4 permits to acquire firearms pursuant to section 134-2
5 and on individuals registering their firearms pursuant
6 to section 134-3;

7 [+](44) [+] The department of commerce and consumer affairs on:

8 (A) Each of the controlling persons of the applicant
9 for licensure as an escrow depository, and each
10 of the officers, directors, and principals who
11 will be in charge of the escrow depository's
12 activities upon licensure; and

13 (B) Each of the controlling persons of an applicant
14 for proposed change in control of an escrow
15 depository licensee, and each of the officers,
16 directors, and principals who will be in charge
17 of the licensee's activities upon approval of
18 such application,

19 as provided by chapter 449; and



1 [+] (45) [+] Any other organization, entity, or the State, its
2 branches, political subdivisions, or agencies as may
3 be authorized by state law."

4 SECTION 4. Section 26H-4, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§26H-4 Repeal dates for newly enacted professional and
7 vocational regulatory programs. (a) Any professional or
8 vocational regulatory program enacted after January 1, 1994, and
9 listed in this section shall be repealed as specified in this
10 section. The auditor shall perform an evaluation of the
11 program, pursuant to section 26H-5, prior to its repeal date.

12 (b) Chapter 436H (athletic trainers) shall be repealed on
13 June 30, 2018.

14 (c) Chapter 465D (behavior analysts) shall be repealed on
15 June 30, 2021.

16 (d) Chapter (appraisal management companies) shall
17 be repealed on June 30, 2023."

18 SECTION 5. The department of commerce and consumer affairs
19 may employ necessary personnel without regard to chapter 76,
20 Hawaii Revised Statutes, to assist with the implementation and
21 continuing function of this Act.



1 SECTION 6. There is appropriated out of the compliance
2 resolution fund established pursuant to section 26-9(o), Hawaii
3 Revised Statutes, the sum of \$ or so much thereof as
4 may be necessary for fiscal year 2018-2019 to implement the
5 appraisal management company registration program.

6 The sum appropriated shall be expended by the department of
7 commerce and consumer affairs for the purposes of this Act.

8 SECTION 7. The provisions of this Act shall be enforced to
9 the extent they are not held to conflict with any federal law.
10 If any provision of this Act is held in conflict with any
11 federal law, this Act in its entirety, shall be invalid.

12 SECTION 8. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 9. This Act shall take effect on July 1, 2050;
15 provided that section 6 of this Act shall take effect on July 1,
16 2017.

17



Report Title:

Appraisal Management Companies; Registration; Real Property;
Appropriation

Description:

Establishes an appraisal management company registration program within the department of commerce and consumer affairs to conform to minimum standards of the Appraisal Management Companies Final Rule and federal Dodd-Frank Wall Street Reform and Consumer Protection Act. Establishes registration requirements, standards, and penalties for violations. Appropriates funds from the compliance resolution fund. Effective 7/1/2050. (SD1)

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